

# Finding

**To:** Record

**From:** Ken Decker, City Manager

**CC:** Distribution

**Date:** January 15, 2021

**Re:** **LOW IMPACT DEVELOPMENT PLAN** submission ICO Former Vipond Building project

On January 6, 2021, the City received a low impact development plan application package for the former Vipond Building located at 1425 11<sup>th</sup> Avenue. Given the absence of Lee Slusser, the former Director of Community Development, it falls upon me to act as Planning Administrator in this matter.

Pursuant to § 640-46, Gregory R. Elliott, RLA, of EADS, submitted the application package on behalf of the developer (Curry Realty). In light of the time sensitive nature of the application, the City accepted digital submission of the documents and no fees were charged. The digital files were distributed the same day to the reviewing entities specified in § 640-48.A.

Under § 640-48, the Planning Administrator has 35 days to determine if a plan depicts a low impact land development. The determination can deny the application, providing the grounds for refusal. In the alternative, the finding can approve the application and issue a certificate of approval for the plan.

Per the Code, the determination of conformance must be made in consultation with the reviewing agencies. Except for the Blair County Planning Commission (BCPC), those agencies have 20 days to submit comments. BCPC has 30 days. Per § 640-48.B., "Failure of an agency to respond in writing ... shall indicate that agency's approval of the plan as submitted."

In broad terms, the submitted plan is the internal renovation of an existing historic structure (what is commonly called "the Vipond building"), an addition to accommodate a lobby, stairwell, and elevator, and a courtyard area with a pedestrian walkway. The proposed adaptive reuse is educational services and office.

The previous use was retail. The change in use conforms with zoning (Central Business Commercial). The structure is currently vacant. There is no on-site parking nor is there any space to create on-site parking. Based on the application, the parking requirement for the previous use was 106 spaces. The proposed use would be 117 spaces. Based on communication from the Altoona Parking Authority, there are 125 spaces reasonably available to accommodate the proposed use.

The three lots (including the Curtin Plaza parcel) were consolidated in 2020 although there is some final paperwork pending. No subdivision is proposed. There is no material change to pedestrian or vehicular circulation.

While not required under the Code, the City consulted with the City Solicitor who reviewed § 640 and the application package, visited the site, and communicated with the Redevelopment Authority attorney regarding the Curtin Plaza deed restrictions. To summarize his memo, the City Solicitor determined that the submission met the requirements of § 640. A detailed discussion of the legal implications deed restrictions is beyond the scope of this memorandum.

Reading § 640 in the context of the broader legislation, the intent is to have a simplified and streamlined process for the review and approval of land use where there are minimal exogenous impacts. It seems clear that this portion of the City Code was meant to facilitate redevelopment. Understandably, any new occupancy—particularly of a vacant structure—represents a significant and potentially disruptive change. The only fair comparison, however, is to weigh the former use (and not the vacancy) against the proposed use.

As noted, the Code requires the determination of eligibility and approval or denial within 35 days. There is no requirement in the Code that the determination of eligibility be made *simultaneously* with the approval or denial nor is there a prohibition on conditional approvals.

Based on the 35-day rule, February 10 is the final day the determination can be made. Due to the unusual circumstances and exigent nature of the project, a determination of eligibility and a contingent approval is warranted with as little delay as possible.

## **Finding 1**

Based on my review of the submission, the City Code, the legal opinion of the City Solicitor, consultation with staff, and the receipt of some (but not all) of the technical review comments, it is my finding that the proposed plan meets the requirements of Chapter 640, Article VIII, Low Impact Land Developments and is eligible for review and approval under the provision thereunder. This determination of eligibility is subject to appeal.

## Finding 2

Because of the last-minute plan submission and the developers' stated goal of beginning construction on February 15, it is necessary to divide the plan/project into phases for conditional approval:

**Phase 1** consists of the internal renovations to the existing building. This phase is conditionally approved contingent on the satisfactory resolution of all 33 comments provided to the developers' engineering firm (EADS) on December 28.

**Phase 2** consists of the structural addition to the building noted on the January 6 plan submission. The addition will accommodate the lobby, stairwell, and elevator. This phase is somewhat more complex because it extends into a deed restricted portion of the property.

The City Solicitor has observed that the deed restrictions are "rather contradictory" and has deferred to the attorney for the Redevelopment Authority—the entity that imposed the restriction upon conveyance—on the interpretation. The Redevelopment Authority Board has indicated support of the proposed project and a willingness to revisit the deed restrictions to facilitate the project, if necessary.

It is beyond the scope of this review and approval to weigh in on the legal nuances of the deed restrictions, but there are two clear paths forward for conditional approval of this phase. First, the Redevelopment Authority attorney can provide a legal opinion that the proposed addition does not conflict with the deed restrictions. Second, the Redevelopment Authority Board can amend or extinguish the restrictions to eliminate any conflict. As such, this phase is conditionally approved upon 1) resolution of the comments noted in the Phase 1 conditional approval, and; 2) a favorable legal opinion by the Redevelopment Authority attorney regarding the deed restrictions, or; 3) amendment or extinguishment of the deed restrictions by the Redevelopment Authority Board.

**Phase 3** consists of the exterior improvements entitled "pocket park" on the plans but more properly described as a courtyard and walkway. Given the nature of the project (primarily internal renovations of an existing structure), this is arguably the part of the plan that has the greatest impact on nearby property owners and the general public. This observation is supported by the comments the City has received from neighboring business/property owners who have expressed support of the project while citing the importance of maintaining pedestrian access between the Altoona Parking Authority parking lot and 11<sup>th</sup> Street.

Given the proposed fence and gates, approval of this phase rests upon resolution of the deed restrictions as noted in Phase 2. The conversion of public space into a private courtyard also suggests the need for a larger discussion, i.e., what is the City's philosophy regarding public-private spaces in the Central Business District.

Altoona provides public parks including Heritage Plaza downtown. There also are public-private spaces in the central business district such as Rossman Park adjoining the Sheetz Center for Entrepreneurial Excellence.

While the authority to approve a low impact land use plan rests at the staff level, the City Code requires the distribution of such plans to the City's Planning Commission. This suggests a legislative interest in hearing the comments and suggestions of the Commission, even if that body is not the approval authority.

The balancing of public and private interests is best done by a public body in a public forum. In this instance, there is the developers desire for certainty in moving forward to construction (in no small hurry) and there is a public interest in open space and pedestrian circulation. The February 2<sup>nd</sup> meeting of the Planning Commission affords that body the right to discuss the plans in a timely manner and provide comments which deserve an opportunity to be incorporated into the final approval.

Informed by all of the above, Phase 3 is approved with the following conditions: 1) the comments on the construction plans noted in Phase 1 are resolved; 2) the deed restriction issue noted in Phase 2 is resolved; 3) all technical comments or corrections regarding the courtyard and pedestrian walkway are incorporated into the final plan; 4) any comments by the Planning Commission agreed upon by a majority of the members are incorporated into the final plan.

Having granted this conditional approval, I note that the fence and gates rest at the heart of this matter. Absent those structures, the plans represent an uncontroversial improvement to a neglected space and an amenity not unlike nearby Rossman Park. This memo is not the place for technical comments like walkway lighting, snow removal, and security and whether or not the gates will be open to the public during working or daylight hours. In the interest of efficiency and providing as much information as possible, I believe those will be issues of interest.

### **Additional information**

Under Pennsylvania law, building permits cannot be issued without an approved land use plan. Once the outstanding comments on the construction plans are resolved, it is my interpretation that the permits for Phase 1 can be issued under the usual terms and conditions thereof. Any questions regarding building/construction permit issuance may be directed to Rebecca Brown, Director of Codes & Inspections.

Given the support of the Redevelopment Authority for the project, I am confident the issues attendant to Phase 2 will be resolved well before February 15, 2021. That would allow permits to be issued for that work as well. Because of the timing of the February 2<sup>nd</sup> Planning Commission meeting, it is possible work will proceed as permitted before final mylars are submitted for signature. Any work performed before final plan signatures will be at the risk of the property owner.

### **Appeal**

Pursuant to § 640-49, "Any aggrieved applicant may appeal the decision of the Planning Administrator to the Altoona City Planning Commission. Such appeal shall be filed with the Commission within 30 days of the Planning Administrator's written decision. The Planning Commission shall have 60 days from such filing to render a decision." For purposes of appeal the date of this decision is January 15, 2021.

X  1/15/2021